

Update: Child Protective Proceedings Benchbook

CHAPTER 11

Evidentiary Issues in Child Protective Proceedings

11.12 Expert Testimony in Protective Proceedings

Insert the following at end of Section 11.12 on page 11-21:

In *People v Bulmer*, ___ Mich App ___, ___ (2003), the Michigan Court of Appeals upheld the trial court’s admission of a computer-animated slideshow simulation regarding shaken baby syndrome. The prosecutor called an expert witness, Dr. DeJong, to testify regarding shaken baby syndrome. As an aid to illustrate Dr. DeJong’s testimony, the prosecutor showed a computer-animated slideshow simulation of what happens to the brain during a “shaken baby” episode. The Court of Appeals stated:

“Demonstrative evidence is admissible when it aids the factfinder in reaching a conclusion on a matter that is material to the case. *People v Castillo*, 230 Mich App 442, 444; 584 NW2d 606 (1998). The demonstrative evidence must be relevant and probative. *Id.* Further, when evidence is offered not to recreate an event, but rather as an aid to illustrate an expert’s testimony regarding issues related to the event, there need not be an exact replication of the circumstances of the event. *Lopez v Gen’l Motors Corp*, 224 Mich App 618, 628, n 13; 569 NW2d 861 (1997).

“After reviewing the slideshow, we conclude that it simply demonstrated what Dr. DeJong was describing in her testimony. Defendant did not object to Dr. DeJong’s testimony that described in detail the shaken baby syndrome. The court also clearly advised the jury that the slideshow was a demonstration and not a reenactment of what happened to the victim. The brief slideshow was relevant and probative in refuting defendant’s claim that he only “gently” shook the victim. The slideshow was not a reenactment. It illustrated Dr. DeJong’s testimony regarding a material issue relating to the case, i.e., whether defendant gently or severely shook the victim. See *Castillo*, *supra*. Even if we

concluded that the admission of the slideshow was a close evidentiary question, a decision on a close evidentiary question ordinarily cannot be an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 67; 614 NW2d 888 (2000).” *Id.* at ____.